

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

ROXANNE ADAMS, ADMINISTRATOR  
OF THE ESTATE OF JAMYCHEAL  
MITCHEL, Deceased,

Plaintiffs,

v.

Civil Action No. 2:16-cv-229

NAPHCARE, INC. et al.,

Defendants.

**MOTION FOR APPROVAL OF WRONGFUL DEATH SETTLEMENT**

NOW COME defendants Hampton Roads Regional Jail Authority ("HRRJA"), David L. Simons, Eugene Taylor, III, Roderick D. Madison, Felicia Cowan, Christopher Gibbs, William Hilliard, Robert Keister, Joseph Powell, David Smith, Joseph Johnson, Tamara Everette, Stephen Phillips, Dale Barnes, Stephano Blakely, Sylvester Bourne, Derrick Brown, Doncosta Butcher, Curtis Dixon, William A. Epperson, Robert Whitaker, Steven W. Whitehead, Reginald Whitehead, Debra K. Ferguson, Gail Hart, Kelly Boyd, and Naphcare, Inc (hereinafter collectively referred to as the "Defendants"), by counsel, and pursuant to Virginia Code § 8.01-55 and Fed. R. Civ. P. 41 and move the court to approve the compromise settlement negotiated by the parties as follows:

1. On August 19, 2015, 24-year old Mr. Jamychoel M. Michell ("Mitchell") was pronounced dead by EMS after being encountered by EMS not breathing and without a pulse while incarcerated at Hampton Roads Regional Jail ("HRRJ").

2. The plaintiff Roxanne Adams (hereinafter referred to as "Adams" or Plaintiff") duly qualified on October 19, 2015 as Administrator of the Estate of Jamychoel M. Mitchell,

Deceased, in the Circuit Court of City of Portsmouth, under the provisions of Virginia Code § 64.2-454

3. Plaintiff filed this action for damages under 42 U.S.C. §1983, as well as for damages under the Virginia Wrongful Death Act, Va. Code §8.01-50 *et. seq.* alleging various claims against the Defendants, which allegations were denied by the Defendants in their pleadings filed

4. The Defendants, without admitting any liability, and distinctly denying such, have offered to compromise the claims of Plaintiff arising from the injuries to and the death of Mitchell.

5. The total combined settlement offer from the Defendants is Three Million Dollars (\$3,000,000.) and the Plaintiff has agreed to accept this sum in full and final settlement of all claims.

6. The statutory beneficiaries pursuant to Virginia Code § 8.01-53 are:

Sonia Adams- mother of Jamycheal Mitchell  
Michael Mitchell - father of Jamycheal Mitchell

Half-sibling of Jamycheal Mitchell through shared mother Sonia Adams:  
Jasmine Adams

Half-siblings of Jamycheal Mitchell through shared father Michael Mitchell, according to Michael Mitchell:  
Lance Tucker  
Laquette Miles  
Michael Miles  
Shavonne Miles  
Shewanda Miles  
Jamie Miles

7. The statutory beneficiaries are unable to reach an agreement as to the manner in which the settlement proceeds should be divided amongst themselves. See attached Notice filed by counsel for the plaintiff marked as Exhibit 1.

8. The Plaintiff and Defendants agree that said compromise is fair and reasonable to all parties.

9. That upon making the payment referenced in paragraphs 5 above, the Defendants will be released from any and all liability and claims arising from the injuries to and the death of Mitchell and that this matter be dismissed with prejudice as to the Defendants.

10. The Defendants ask that the court hold a separate, second evidentiary hearing to determine the manner in which the proceeds of the settlement are to be distributed to the statutory beneficiaries. See attached Exhibit 1.

Wherefore, the Defendants, by counsel, respectfully request that the Court convene a hearing for the entry of an Order to approve this settlement, that all Defendants be dismissed with prejudice, that a second evidentiary hearing be convened without the required attendance of the Defendants to determine the manner in which the proceeds of this settlement are to distributed among the statutory beneficiaries, and other such relief as the court deems necessary and appropriate.

Respectfully submitted,

By Counsel

/s/

William W. Tunner (VSB No.: 38358)

ThompsonMcMullan, P.C.

100 Shockoe Slip, Third Floor

Richmond, Virginia 23219

Telephone: (804) 698-6251

Fax: (804) 780-1813

[wtunner@t-mlaw.com](mailto:wtunner@t-mlaw.com)

*Counsel for Defendants Dale Barnes, Stephano Blakely, Sylvester Bourne, Derrick Brown, Doncosta Butcher, Curtis Dixon, William A. Epperson, Robert Whitaker, Steven W. Whitehead, and Reginald Whitehead*

By Counsel:

/s/

*Edward J. McNelis, III, Esq.*

*Christopher F. Quirk, Esq.*

*Ruth T. Griggs, Esq.*

*Justin W. Ward, Esq.*

*SANDS ANDERSON PC*

*Post Office Box 1998*

*Richmond, VA 23218-1998*

*EMcNelis@SandsAnderson.com*

*cquirk@sandsanderson.com*

*rgriggs@sandsanderson.com*

*jward@sandsanderson.com*

*Counsel for Defendant Naphcare, Inc*

By Counsel

/s/

*Jeff W. Rosen, Esq.*

*PENDER & COWARD, P.C.*

*222 Central Park Avenue, Suite 400*

*Virginia Beach, VA 23462*

*jrosen@pendercoward.com*

*Counsel for Defendants HRRJA, HRRJ, Supt. Simons, Asst. Supt. Taylor, Officer Gibbs, Officer Hillard, Officer Keister, Officer Powell, MJO Smith, JMO Johnson, Sgt. Everette, Sgt. Phillips, Lt. Madison, Capt. Cowan*

By Counsel:

/s/

*David P. Corrigan, Esq.*

*Leslie A. Winneberger, Esq.*

*Douglas E. Pittman, Esq.*

*Harman Claytor Corrigan & Wellman*

*P O Box 70280*

*Richmond, VA 23255*

*Phone 747-5200*

*dcorrigan@hccw.com*

*lwinneberger@hccw.com*

*dpittman@hccw.com*

*Counsel for Debra K. Ferguson*

By Counsel

/s/ \_\_\_\_\_  
Gregory F. Holland, Esq.  
Dov M. Szego, Esq.  
Setliff Law, P.C.  
4940 Dominion Boulevard  
Glen Allen, VA 23060  
Phone 377-1275; Fax 377-1295  
[gholland@setlifflaw.com](mailto:gholland@setlifflaw.com)  
[dszego@setlifflaw.com](mailto:dszego@setlifflaw.com)  
*Counsel for Gail Hart*

By Counsel

/s/ \_\_\_\_\_  
Marshall H. Ross, Esq.  
Alexander K. Page, Esq.  
Office of the Virginia Attorney General  
202 North 9<sup>th</sup> Street  
Richmond, VA 23219  
[Mrross@oag.state.va.us](mailto:Mrross@oag.state.va.us)  
[Apag@oag.state.va.us](mailto:Apag@oag.state.va.us)  
*Counsel for Defendant Kelly N. Boyd*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of January, 2019, I filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Mark J. Krudys, Esq.  
The Krudys Lar Firm, PLC  
Suntrust Center  
919 East Main Street, Suite 2020  
Richmond, VA 23219  
Phone: (804)774-7950  
Fax: (804) 381-4458  
[mkrudys@krudys.com](mailto:mkrudys@krudys.com)  
*Counsel for Plaintiff*

By: /s/  
William W. Tunner, Esq. (VSB #38358)  
ThompsonMcMullan, P.C.  
100 Shockoe Slip  
Richmond, VA 23219  
Phone (804) 698-6205  
Fax: (804) 780-1813  
[wtunner@t-mlaw.com](mailto:wtunner@t-mlaw.com)

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

ROXANNE ADAMS, ADMINISTRATOR OF  
THE ESTATE OF JAMYCHEAL M. MITCHELL,  
Deceased,

Plaintiff,

Case No. 2:16-cv-229

v.

NAPHCARE, INC., *et al.*,

Defendants.

**PLAINTIFF'S NOTICE**

Plaintiff Roxanne Adams, Administrator of the Estate of Jamycheal M. Mitchell,  
Deceased, by counsel, respectfully makes the following Notice to the Court:

1. This Notice will inform the Court of the status of the settlement and related wrongful-death approval process. A portion of the settlement required the Governor's approval (and, prior to his approval, approval by various other Commonwealth employees). The undersigned now understands that the Governor has approved the settlement. Additionally, the two groups of settling defendants are either prepared, or will soon be prepared, to disburse settlement funds.

2. However, there is not unanimity among the statutory beneficiaries ("Beneficiaries") as to how the settlement proceeds should be apportioned among themselves. As a result, an evidentiary hearing will be needed on the issue. The undersigned anticipates that as many as 11 witnesses will testify and be cross-examined regarding the relationships between the Beneficiaries and the decedent, Jamycheal Mitchell. To facilitate that process, the undersigned has provided to counsel for the Beneficiaries transcripts of each Beneficiary's deposition testimony in the matter.

3. On two occasions, the undersigned has sought available hearing dates for the Beneficiaries. Two of the beneficiaries are represented by Virginia counsel. The remaining seven Beneficiaries are represented by Louisiana counsel. (One of these Beneficiaries previously declined to have his deposition taken in the matter.) The foregoing Virginia counsel has provided his available hearing dates, which are in late January and early February 2019. The Louisiana counsel has provided his hearing dates, which are in late February; he indicated that he was not available on any of the dates proposed by Virginia counsel.

4. When the undersigned has previously handled a wrongful-death settlement in which there was not unanimity among the parties, he divided the process into two parts – a hearing to approve the settlement, attorney's fees, and costs, and a second hearing related to the apportionment of the remaining proceeds among the statutory beneficiaries. Bifurcating the forgoing matters into two issues allowed the affected defense counsel to avoid attendance at the second hearing, permitted the expeditious payment of counsel, and permitted the beneficiaries time to adequately prepare and present their cases. The undersigned will, of course, follow whichever process the Court prefers.



Respectfully submitted,

ROXANNE ADAMS, ADMINISTRATOR  
OF THE ESTATE OF JAMYCHEAL M.  
MITCHELL, DECEASED

By: /s/ Mark J. Krudys  
Counsel

Mark J. Krudys (VSB# 30718)  
THE KRUDYS LAW FIRM, PLC  
SunTrust Center  
919 E. Main Street, Suite 2020  
Richmond, VA 23219  
Phone: (804) 774-7950  
Fax: (804) 381-4458  
Email: mkrudys@krudys.com  
Web: www.krudys.com

John F. Preis (VSB# 45764)  
7719 Rock Creek Rd.  
Henrico, VA 23229  
Phone: (804) 289-8682  
Email: jpreis@richmond.edu

*Counsel for Plaintiff Roxanne Adams, Administrator of the Estate of  
Jamycheal M. Mitchell, Deceased*

**Certificate of Service**

I hereby certify that on this 9<sup>th</sup> day of January 2019, I will electronically file the foregoing pleading with the Clerk of Court using the CM/ECF system, which will then send a notification of the filing to all counsel of record:

Gregory F. Holland, Esq.  
Dov Szego, Esq.  
Setliffe & Holland, P.C.  
4940 Dominion Boulevard  
Glen Allen, Virginia 23060  
gholland@setliffholland.com; DSzego@setliffllaw.com  
*Counsel for Defendant Hart*

Jeff W. Rosen, Esq.  
Jeffrey Hunn, Esq.  
Pender & Coward  
222 Central Park Ave., Suite 400  
Virginia Beach, VA 23462  
jrosen@pendercoward.com; jhunn@pendercoward.com  
*Counsel for Defendants HRRJA, HRRJ, Supt. Simons, Asst. Supt. Taylor, Officer Gibbs, Officer Hilliard, Officer Keister, Officer Powell, MJO Smith, MJO Johnson, Sgt. Everette, Sgt. Phillips, Lt. Madison, Capt. Cowan*

Edward J. McNelis, III, Esq.  
Grace Morse-McNelis, Esq.  
Christopher F. Quirk, Esq.  
Ruth T. Griggs, Esq.  
Sands Anderson  
P.O. Box 1998  
Richmond, VA 23218  
EMcNelis@sandsanderson.com; CQuirk@sandsanderson.com  
GMorseMcNelis@sandsanderson.com; RGriggs@sandsanderson.com  
*Counsel for Defendants NaphCare; Kolongo, MD; Edwards, LCSW; Ray, NP-Psych; Ngwa, NP; Johnson, RN; Thomas, RN, HSA; Rivers, LPN; Nicholson, MA; Murphy, MSW*

Alexander K. Page, Assistant Attorney General  
Marshall H. Ross, Esq., Assistant Attorney General  
Office of the Virginia Attorney General  
202 North 9<sup>th</sup> Street  
Richmond, VA 23219  
Apage@oag.state.va.us; MRoss@oag.state.va.us  
*Counsel for Defendant Boyd*

David P. Corrigan, Esq.  
Jeremy D. Capps, Esq.  
Leslie A. Winneberger, Esq.  
Douglas E. Pittman, Esq.  
Harman, Claytor, Corrigan & Wellman  
P.O. Box 70280  
Richmond, VA 23255  
dcorrigan@hccw.com; jcapps@hccw.com  
lwinneberger@hccw.com; dpittman@hccw.com  
*Counsel for Defendant Ferguson*

William W. Tunner, Esq.  
Mark R. Colombell, Esq.  
Michael G. Matheson, Esq.  
William D. Prince, IV, Esq.  
ThompsonMcMullan, P.C.  
100 Shockoe Slip, Third Floor  
Richmond, Virginia 23219  
wtunner@t-mlaw.com; mcolombell@t-mlaw.com  
mmatheson@t-mlaw.com; wprince@t-mlaw.com  
*Counsel for Defendants Officer Barnes, Officer Blakely, Officer Bourne, Officer Brown,  
Officer Butcher, MJO Dixon, Sgt. Epperson, Officer Whitaker, Sgt. S. Whitehead, and Lt.  
R. Whitehead*

I will then also send the foregoing pleading and a notification of such filing (NEF) to the  
following via Email and First Class Mail:

Michael Goodove, Esq.  
Swartz, Taliaferro, Swartz, & Goodove  
220 West Freemason Street  
Norfolk, Virginia 23510  
mike@goodove.com  
*Counsel for beneficiaries Sonia Adams and Jasmine Adams*

Anthony Lewis, Esq.  
Law Office of Anthony P. Lewis  
307 St. Philip Street  
Thibodaux, LA 70301  
attyalewis17318@aol.com  
*Counsel for beneficiaries Michael Mitchell, Lance Tucker, Laquette Miles, Michael Miles,  
Shavonne Miles, Shewanda Miles, and Jamie Mitchell*

/s/ Mark J. Krudys

Mark J. Krudys (VSB# 30718)  
THE KRUDYS LAW FIRM, PLC  
SunTrust Center  
919 E. Main Street, Suite 2020  
Richmond, VA 23219  
Phone: (804) 774-7950  
Fax: (804) 381-4458  
Email: mkrudys@krudys.com

*Counsel for Plaintiff Roxanne Adams,  
Administrator of the Estate of  
Jamycheal M. Mitchell, Deceased*